

EXHIBIT

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10
11 DEPOSITION OF JONATHAN GURYAN
12
13 DATE: April 27, 2022
14 TIME: 9:30 a.m.
15 LOCATION: Via Zoom Videoconference
16
17 REPORTED BY: Constance H. Rhodes
Reporter, Notary

22 Job No. CS5185100

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1	A P P E A R A N C E S		
2		1 P R O C E E D I N G S	
3	On behalf of Plaintiff:	2 WHEREUPON,	
4	MICHAEL ROSMAN, ESQUIRE	3 JONATHAN GURYAN	
5	MICHELLE SCOTT, ESQUIRE	4 called as a witness, and having been first duly	
6	Center for Individual Rights	5 sworn, was examined and testified as follows:	
7	1100 Connecticut Avenue, Northwest	6 EXAMINATION BY COUNSEL FOR DEFENDANTS	
8	Suite 625	7 BY MS. DINAN:	
9	Washington, DC 20036	8 Q Good morning. My name is Christine	
10	Rosman@cir-usa.org	9 Dinan. I'm an attorney with the Department of	
11		10 Justice and I represent the defendants in this	
12		11 matter. This deposition is being taken pursuant	
13		12 to the Federal Rules of Civil Procedure.	
14		13 Dr. Guryan, can you please state and spell	
15	* * * * *	14 your full name for the record?	
16		15 A Jonathan Guryan, J-O-N-A-T-H-A-N,	
17		16 G-U-R-Y-A-N.	
18		17 Q I understand you have been deposed	
19		18 before; is that right?	
20		19 A That's correct.	
21		20 Q Approximately how many times have you	
22		21 been deposed?	
		22 A I think approximately 25 to 30 times.	
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1	C O N T E N T S		
2	EXAMINATION BY:	PAGE	
3	Counsel for Defendants	4	1 Q Since you've been deposed before, I'm
4	Counsel for Plaintiff	238	2 not going to spend time going over all the rules
5			3 and reminders, but I do want to go over just a few
6			4 things.
7	E X H I B I T S		
8	1 Expert Report of Jonathan Guryan	22	5 First, if I ask you a question that you
9	2 Expert Report of Jon Wainwright	129	6 don't understand, please ask me to rephrase or
10	3 Update to the Assessment of Contracting		7 clarify before answering. If you answer the
11	Outcomes for Small Disadvantaged		8 question I will assume that you understood it.
12	Businesses	209	9 Second, are you on any medications that
13			10 might affect your ability to give complete and
14			11 accurate testimony today?
15			12 A No.
16			13 Q Is there anything else that might affect
17			14 your ability to give complete and accurate
18			15 testimony today?
19			16 A No.
20			17 Q And I'd also like to ask for your
21			18 agreement to certain things since this deposition
22	(*Exhibits attached to transcript.)		19 is being taken remotely via Zoom. Will you agree
			20 that you not make a recording of any kind of
			21 today's deposition?
			22 A I do.

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1 the cause of the differences in pay or the 2 disparities.	1 A No. We don't -- we don't draw 2 conclusions about discrimination based on 3 regressions of the type that Dr. Wainwright used.
3 Q I just want to make sure I understand 4 that. The model -- I'm not a economist, I 5 apologize for that -- but the model distinguishes 6 between discrimination inside the market and 7 outside the market; is that right?	4 Q That wasn't my question. You said you 5 ran regressions in addition to tests using this 6 model. Those are different things, correct?
8 A The model makes predictions about what 9 you would expect to see in the data if there is 10 discriminations inside the market as opposed to if 11 differences in pay are caused by nondiscriminatory 12 factors or discrimination outside the market. And 13 so we test whether those predictions of the model 14 show up in the data and whether other associations 15 in the data show up that you might see if they 16 were caused by discrimination outside the market 17 or nondiscriminatory factors.	7 A Regressions are useful tools for some 8 things. So I certainly have run regressions in 9 lots of papers. My criticism of regression is not 10 that regressions are flawed fundamentally. It's 11 that using a regression of the form that 12 Dr. Wainwright used to try to test for 13 discrimination is flawed.
18 Q When you were running the study did you 19 run one test or more than one?	14 Q That wasn't my question. I'm talking 15 about this study that you've described where you 16 were studying the role that racial prejudice plays 17 on pay. As I understand it, just to be clear, you 18 ran regressions as part of that study, and you 19 also ran some tests using Becker's economic model.
20 MR. ROSMAN: Objection to the form of the 21 question. You may answer.	20 Is that correct, or am I misunderstanding 21 something?
22 THE WITNESS: There are multiple forms of	22 A The only analyses in the paper that are
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1 the tests. It's hard to say how you would count how 2 many tests there are. There certainly are -- 3 there's more than one result in the paper, and the 4 test is run in different ways that are both -- those 5 tests are all derived from the economic model.	1 testing for discrimination are the ones that are 2 based on Becker's economic model. In performing 3 the analyses in the paper for other purposes, 4 there are some regressions that we used.
6 BY MS. DINAN:	5 Q And what were those other purposes that 6 regressions were run for?
7 Q So is it accurate to say you ran several 8 tests using the same model, the same economic 9 model, as you've described it?	7 A Well, so in order to calculate what the 8 wage gaps are between black and white workers at 9 the state level, we ran regressions to calculate 10 those differences in pay.
10 MR. ROSMAN: Same objection. You may 11 answer.	11 Q Okay. So I guess my question is, it 12 sounds like you ran more than one test. I 13 understand the regressions were studying something 14 different than the economic model was, but you 15 also said you tested several predictions. So is 16 it fair to say that were several tests or analyses 17 run as part of this study?
12 THE WITNESS: The same theoretical model 13 makes more than one prediction, and we tested more 14 than one prediction.	18 A It is fair to say that there were -- 19 there was more than one test done or analysis 20 that's in that paper.
15 BY MS. DINAN:	21 Q Does the fact that multiple tests were 22 run give you greater confidence in the conclusions
16 Q And so you said also ran a regression 17 analysis as part of that study, correct?	
18 A There are regressions run in that study, 19 yes.	
20 Q That's two types of analyses -- 21 regressions and tests -- using this model, is that 22 accurate? Am I understanding that correctly?	

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1 that were reached in that study? 2 A So in that study we ran the tests in 3 different ways that were predicted by the -- and 4 implied by the economic model. And yes, the fact 5 that the results are consistent across those 6 different ways of running the test did give me 7 more confidence that the conclusion was correct. 8 MS. DINAN: Okay. I'm happy to move on. 9 We've been going for about an hour and a half now. 10 Do folks need a break or do you want to go a little 11 further before we take one? How is everyone doing, 12 including Ms. Rhodes. 13 THE REPORTER: I'm okay. 14 BY MS. DINAN: 15 Q Okay. So paragraph 6 is the next one I 16 want to test in your report. "Statistical Tests 17 for the Existence of Discrimination." That's on 18 page 8. 19 You note in your report that if a social 20 scientist can't reject the possibility that a 21 disparity in outcomes between two groups could have 22 been generated in the absence of the type of	1 to consider whether both nondiscriminatory factors 2 and other types of discrimination other than the 3 type that the researcher is trying to test for 4 contributed to or caused the disparity that the 5 researcher observes. 6 Q If a social scientist, as you said, 7 can't reject the possibility that a disparity 8 could have been generated in the absence of 9 whatever discrimination you are testing for -- I 10 understand you are saying he can't conclude that 11 that type of discrimination caused a disparity -- 12 can he conclude that some type of discrimination 13 caused the disparity or may have caused the 14 disparity? 15 MR. ROSMAN: Objection to the form of the 16 question. Compound. Go ahead. 17 THE WITNESS: Now you have changed the 18 question that the researcher is asking. Now, as I 19 understand the question, it's whether a disparity 20 was caused by any discrimination of any type. If 21 that is -- 22
1 discrimination in question, then he can't conclude 2 that the particular type of discrimination caused 3 the disparity. 4 What do you mean here when you say "the 5 type of discrimination in question"? 6 A You are referring to the middle 7 paragraph on page 9? That's where you are reading 8 from? 9 Q Yes. 10 A What I'm referring to there is that 11 there is some question that the researcher-analyst 12 is trying to answer and that question might be 13 that they are trying to answer whether, say, 14 discrimination by employers in a labor market 15 causes differences in pay. That is a particular 16 type of discrimination. There's other types of 17 discrimination that one might test for that might 18 exist in the world. That is the type of 19 discrimination in that example that the researcher 20 is trying to test for. 21 If that is the question that the 22 researcher is trying to answer, then it's necessary	1 BY MS. DINAN: 2 Q Yes. 3 A If that is the question, then one must 4 consider whether a disparity was caused by any 5 nondiscriminatory factor. 6 Q Okay. Same question. But could he 7 conclude that the results are consistent with 8 discrimination? 9 A I think it would be inappropriate and 10 misleading to draw a conclusion that a disparity 11 is consistent with discrimination without 12 considering whether the disparity was caused by 13 factors other than discrimination. 14 Q Just to clarify, is the standard you are 15 really looking at here causation, trying to 16 determine what caused a disparity? 17 A I want to be real careful because it may 18 be that that word "causation" has a different 19 meaning in the legal sense than the way I used it 20 as a social science researcher. 21 What I'm saying is that if there's a 22 disparity. So there's a difference in outcomes

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<p>1 differences in the capacity.</p> <p>2 How many of the 205 studies that</p> <p>3 Dr. Wainwright reviewed do you believe failed to</p> <p>4 control for firm size or capacity?</p> <p>5 A I don't know exactly how many, but many</p> <p>6 of them.</p> <p>7 Q How would you measure capacity?</p> <p>8 A In the context of calculating a</p> <p>9 disparity index?</p> <p>10 Q No. In the context of determining the</p> <p>11 capacity of a business?</p> <p>12 A So I couldn't tell you a specific</p> <p>13 variable that I would use. This is not a -- I was</p> <p>14 not -- you know, I didn't design a disparity index</p> <p>15 or a disparity study myself here, so I haven't</p> <p>16 gone through all the details of figuring out the</p> <p>17 exact specifics of how I would try to control for</p> <p>18 capacity.</p> <p>19 The idea would be to try to control for</p> <p>20 differences in the size of firms and features of</p> <p>21 firms that allow them to take on projects of</p> <p>22 different size and different numbers of projects at</p>	<p>1 saying that the study should have controlled for</p> <p>2 capacity. If the goal of the study was to measure</p> <p>3 disparity without trying to draw a conclusion</p> <p>4 about whether that disparity was caused by</p> <p>5 discrimination, then it may not have been</p> <p>6 necessary to control for capacity.</p> <p>7 What my opinion is is that given that many</p> <p>8 of the studies don't control for capacity, it's</p> <p>9 inappropriate to draw a conclusion based on the</p> <p>10 calculations of disparities from those studies that</p> <p>11 there was discrimination.</p> <p>12 Q Okay. You don't have an opinion as to</p> <p>13 the correct way to measure capacity in that</p> <p>14 context?</p> <p>15 A No, I don't. I don't have a full</p> <p>16 solution of how one should fully control for</p> <p>17 capacity. I think it's difficult, and partly</p> <p>18 because it is difficult, it's inappropriate to</p> <p>19 draw a conclusion that the disparity is the result</p> <p>20 of discrimination as opposed to capacity, which is</p> <p>21 either not measured or hard to measure.</p> <p>22 Q A few moments ago you mentioned size of</p>
<p>1 the same time. That, you know, measuring that may</p> <p>2 be difficult, so I'm not sure I have an obvious</p> <p>3 solution about the way that I think that that should</p> <p>4 be done.</p> <p>5 But my criticism is different. My</p> <p>6 criticism is not -- my criticism is that when one</p> <p>7 sees the disparity that does not fully or at all</p> <p>8 control for capacity, it's inappropriate to draw a</p> <p>9 conclusion that that disparity is the result of</p> <p>10 discrimination as opposed to differences in</p> <p>11 capacity.</p> <p>12 Q Okay. So I understand it, your</p> <p>13 criticism is that capacity should have been</p> <p>14 controlled for and was not, but you don't have an</p> <p>15 opinion as to the appropriate way to measure</p> <p>16 capacity.</p> <p>17 A I wouldn't agree with that quite in the</p> <p>18 way that you said it. What I would say is that</p> <p>19 it's inappropriate to draw a conclusion about</p> <p>20 discrimination given the way that capacity either</p> <p>21 was not controlled for or controlled for</p> <p>22 insufficiently. Your question suggested that I'm</p>	<p>1 the firm is potentially relevant to this. Do you</p> <p>2 believe that firms can vary their size based on</p> <p>3 demand?</p> <p>4 A I believe that they can do that to some</p> <p>5 extent. I don't believe that's unlimited, and I</p> <p>6 believe it's costly. And I believe it's costly to</p> <p>7 do so quickly. And the fact there are differences</p> <p>8 in firm size can contribute to differences in the</p> <p>9 likelihood that firms will bid on contracts and</p> <p>10 also could contribute to the likelihood that they</p> <p>11 might receive or win a bid if decisions about who</p> <p>12 wins bids are based on beliefs by the decision</p> <p>13 maker about whether the firm is going to be able</p> <p>14 to deliver on the contract that they bid on.</p> <p>15 Q If you were attempting to measure</p> <p>16 capacity how would you account for this, you know,</p> <p>17 the fact that firms can change their size based on</p> <p>18 demand?</p> <p>19 A That's one of the reasons why measuring</p> <p>20 capacity is difficult, as I said earlier. But</p> <p>21 that's also one of the reasons why, because it's</p> <p>22 difficult to measure, it's inappropriate to draw a</p>

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<p>1 conclusion based on a disparity that doesn't fully 2 control for capacity that there is discrimination. 3 Q Did you perform any calculations to 4 determine the effects of differences in a firm's 5 capacity, if they existed, would have on 6 Dr. Wainwright's analysis?</p> <p>7 A I did not.</p> <p>8 Q Did you attempt to recalculate any of 9 the disparity indexes in the reports that 10 Dr. Wainwright reviewed accounting for capacity?</p> <p>11 A No.</p> <p>12 Q Do you believe that any differences in 13 the capacity between minority-owned and 14 nonminority-owned firms could be influenced by 15 discrimination?</p> <p>16 A I believe that to the extent there's 17 differences in capacity between minority- and 18 nonminority-owned firms, that can be the result of 19 discrimination in some form. That's a different 20 question than whether it is the result of 21 discrimination in the contracting -- federal 22 contracting market, and it's also a different</p>	<p>1 Q In your report you describe a 2 hypothetical industry in which there are many 3 smaller businesses and few -- very few large 4 businesses, and the few large businesses are 5 nonminority-owned. This is on page 19 of your 6 report, but I'm just paraphrasing.</p> <p>7 You note that if businesses in this 8 industry bid for contracts that are proportionate to 9 their size and contracts are awarded at equal rates 10 to every business that bids for a contract, the 11 ratio of utilization to availability will be lower 12 for minority than nonminority businesses.</p> <p>13 My question is what evidence do you have 14 that businesses bid on contracts proportionate to 15 their size?</p> <p>16 MR. ROSMAN: I'm going to ask to have just 17 the question, the last sentence, read back. I 18 didn't really hear it.</p> <p>19 (Whereupon, the Reporter read the record 20 as requested.)</p> <p>21 MR. ROSMAN: I'm going to object to the 22 form of the question then. Go ahead.</p>
<p>1 question from whether it is the result of current 2 versus historical discrimination.</p> <p>3 Q Okay. But what if the question is just 4 if there is discrimination in the contracting 5 market nationwide and discrimination of any type?</p> <p>6 A Again, I refer to discrimination outside 7 of the contracting market. So the fact that there 8 are differences in capacity, to the extent that 9 that's true, that could be the result of 10 discrimination outside of the federal contracting 11 market. It could be the result of discrimination 12 in markets that happened in the past. It could be 13 the result of other factors. Without an analysis 14 of that, you know, it's not appropriate to draw 15 conclusions about discrimination in the 16 contracting market.</p> <p>17 Q Have you performed any tests or analysis 18 to determine whether there is -- whether 19 differences in capacity of minority- and 20 nonminority-owned firms are influenced by 21 discrimination?</p> <p>22 A I haven't.</p>	<p>1 THE WITNESS: So I'm -- this part of the 2 report that you're pointing to, I'm describing a 3 hypothetical example to make -- to illustrate the 4 broader point that without controlling for or 5 considering the role that capacity might play in 6 determining utilization relative to availability, 7 it's inappropriate to draw a conclusion that the 8 difference in the ratio of utilization to 9 availability is caused by discrimination. And this 10 is a hypothetical example that would be one 11 situation where capacity would play a role that none 12 of -- sorry, I won't say none -- that many of the 13 studies that Dr. Wainwright relied on don't adjust 14 for.</p> <p>15 And so my opinion is that a summary of 16 all of those studies that include at least some 17 that don't adjust for differences in capacity 18 can't appropriately lead to a conclusion that the 19 disparity and utilization is the result of 20 discrimination.</p> <p>21 BY MS. DINAN:</p> <p>22 Q I understand it's a hypothetical, but my</p>

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<p>1 question is do you have any evidence that 2 businesses bid on contracts proportionate to their 3 size? Are you aware of any evidence of that? 4 A I can't think of a study off the top of 5 my head that says one way or the other, but I 6 haven't seen an analysis by Dr. Wainwright showing 7 that it's not true. 8 Q Do you recall that capacity is a static 9 notion? 10 A No. I think firms grow and shrink over 11 time, and they make investments that can change 12 their capacity. 13 Q Some other criticisms you've made of the 14 disparity studies in your report, you contend that 15 the disparity study that is published by a state 16 or local government as support for a particular 17 DBE program is likely to show disparities that the 18 program is intended to remedy. 19 That's on page 15 of your report. What is 20 the basis for this assertion? 21 A My understanding from Dr. Wainwright's 22 report and his deposition is that the way he got</p>	<p>1 be aware of those either. 2 Q You don't have any actual evidence 3 that's in fact true, that those studies -- you 4 know, studies were not published because they 5 didn't show disparities, correct? 6 A I couldn't name a specific study, no. 7 I'm talking about the logic of the way that the 8 studies become published so that Dr. Wainwright 9 gets access to them well. 10 Q Did you review each of the 205 disparity 11 studies that Dr. Wainwright reviewed to determine 12 whether there were disparities overall in the 13 utilization of minority-owned businesses in each 14 of those studies? 15 A I did not redo Dr. Wainwright's 16 calculations. 17 Q That wasn't my question. My question 18 was did you review them specifically to determine 19 whether there were any studies that did not find 20 any disparities? 21 A I don't believe there are any studies in 22 Dr. Wainwright's sample that show no disparities</p>
<p>1 these 205 studies is that these are the ones that 2 have been published by the entities that are 3 running DBE programs. And I'm raising the 4 possibility that if the DBE program exists, that 5 means it has been justified. And if there are 6 other studies that have been done that didn't show 7 disparities and led to DBE programs not existing, 8 then it's possible that Dr. Wainwright wouldn't 9 see those studies because those studies wouldn't 10 ever be made public. 11 Q Are you aware of any published studies 12 that show that there were no disparities over all? 13 A Sorry. The point of my answer to the 14 last question is that the studies that don't find 15 any disparities overall might not ever be 16 published. 17 Q I understand. You are saying might. I 18 guess I'm saying are you aware of any studies that 19 were not published because they did not show 20 disparities? 21 A I am not aware of those, and my point is 22 that I would expect that Dr. Wainwright might not</p>	<p>1 in any of the markets or submarkets that they 2 evaluated. But that's a different point from the 3 point I'm making in the section of the report that 4 you are asking about. 5 Q Right. I think there are two separate 6 questions. One is whether there were any that 7 were not published because they didn't have 8 disparities. We talked about that. 9 The other is whether, of the studies in 10 the sample, the 205 studies in the sample, is it 11 your understanding that each of those studies had a 12 finding -- and I'm not asking about specific 13 markets -- that they all -- each of those studies 14 had results that show that there were disparities 15 overall in the utilization of minority-owned 16 businesses? 17 A I did not see any that didn't show any 18 disparity at all such that it would -- could be 19 used to justify the existence of a DBE program. 20 Q You also criticized Dr. Wainwright's 21 analysis of disparities in the industry that 22 plaintiff operates in is not specific enough</p>